

DATE: October 18, 2007

In re:)
)
)

SSN: -----)

Applicant for Security Clearance)
_____)

ISCR Case No. 07-01659

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant is 54 years old and has worked as a rigger for a defense contractor since 1973. He has about \$27,765 in delinquent debt, and of that amount, \$2,270 has been paid. He is contemplating filing a Chapter 13 bankruptcy petition but has not yet committed to do that. For the past seven months, Applicant has been working seven days a week. The money he earned was not earmarked for his delinquent debts. He financially assisted his children, ages 25 and 22, and his girlfriend. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

On March 17, 2006, Applicant executed an Electronic Questionnaire for Investigation Processing.¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance, and issued a Statement of Reasons (SOR)² on May 25, 2007, detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

By letter dated June 26, 2007, Applicant, through counsel, responded to the SOR allegations and requested a hearing. Department Counsel indicated the case was ready to proceed on July 31, 2007. This case was assigned to me on August 3, 2007. A Notice of Hearing was issued on August 6, 2007, scheduling the hearing for August 30, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted exhibits 1-8, and Applicant submitted exhibits A-H, all of which were admitted into the record without objection. The record was left open to give Applicant time to submit additional documents. Applicant submitted two additional documents. The documents were identified as exhibits I and J and admitted without objection. The transcript (Tr.) was received on September 12, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations under subparagraphs 1.c, 1.e-1.h, and 1.j. Those admissions are incorporated herein as findings of fact. He denied the allegations in subparagraphs 1.a, 1.b, 1.d, 1.i, 1.k, and 1.l. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 54 years old and has worked as a rigger for a defense contractor since 1973. He left school after completing the eighth grade. He is divorced and has two adult children, ages 25 and 22.

On January 9, 2001, Applicant injured his left shoulder on the job and had surgery in March 2004. After surgery, he filed a worker's compensation claim. He received a total of \$18,110.18 in benefits for the period March 12, 2004 through September 26, 2004.³ He was out of work for about six months.⁴

¹Ex. 1 (Electronic Questionnaire for Investigations Processing, dated March 17, 2006).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

³Ex. B (Notice of Final Payment or Suspension of Compensation Payments).

⁴Tr. at 22.

In November 2004, Applicant had surgery on his right shoulder for an on-the-job injury that occurred in March 1995. He filed a worker's compensation claim and received a total of \$13,578.47 in benefits for the period November 19, 2004 through April 24, 2005.⁵ He was out of work for about six months.⁶

The SOR lists that Applicant has 12 delinquent and outstanding debts totaling approximately \$27,765. He proffered evidence of paying two debts, totaling \$2,270. A 2003 judgment against him was paid on March 24, 2006 (SOR 1.b).⁷ A debt for a television account for \$48 (SOR 1.f) was paid on August 29, 2007. The SOR listed that he was 120 days delinquent on a mortgage valued at \$112,000 (SOR 1.i). At the hearing, he testified that he deeded this property to his ex-wife, once he became delinquent on the mortgage payments. The loan was paid in full on June 30, 2006.⁸

Applicant is contemplating filing for Chapter 13 bankruptcy protection. During the last two months, he has had appointments with his attorney to review his financial situation.⁹ His attorney suggested that Applicant file a Chapter 13 bankruptcy petition, and he would be obligated to repay a portion of all of his delinquent debts based on his income.¹⁰

Applicant has nine delinquent debts outstanding, totaling approximately \$25,495. Applicant indicated he has no knowledge of a debt for \$1,707 (SOR 1.a).¹¹ He indicated his bankruptcy attorney will assist him in tracking what this debt represents.¹² He indicated that a bill for \$147 (SOR 1.c) for a delinquent television account would be paid the day after the hearing.¹³ He denied owing \$2,093 (SOR 1.d) on a delinquent account.¹⁴ A telephone bill for \$232 (SOR 1.e) may be paid off by him or it might be included in his bankruptcy.¹⁵ He owes \$470 (SOR 1.g) on a telephone account, and this debt will be included in the bankruptcy.¹⁶ He owes \$9,157 (SOR 1.h) on a car he purchased in 2006. After lending the car to his girlfriend, it was in an accident that incurred \$7,000 worth of damages. After the car was repaired, the insurance company dropped him and he returned the car to

⁵Ex. A (Notice of Final Payment or Suspension of Compensation Payments).

⁶Tr. at 22.

⁷Ex. D (Judgment Information).

⁸Ex. I (Mortgage Letter, dated April 26, 2007).

⁹Ex. C (Letter, dated August 30, 2007).

¹⁰Ex. F (Money Order Receipt, payable to AT&T).

¹¹Tr. at 37.

¹²*Id.*

¹³Tr. at 42-43.

¹⁴Tr. at 44.

¹⁵Tr. at 44-45.

¹⁶Tr. at 48.

the dealer because it did not drive right. The car was to be auctioned by the dealer but he never heard from them.¹⁷ An account with a collection agency for another car was charged off for \$2,385 (SOR 1.j).¹⁸ Applicant stated that car debt arose when he had heart surgery, and he had no money to make payments. He is indebted to a collection agency on an account totaling \$9,120 (SOR 1.k). He believes this debt duplicates the debt for \$9,157 (SOR 1.h).¹⁹ If he finds out that this is a separate debt, he will include it as part of his bankruptcy.²⁰ He believes that a debt for \$184 (SOR 1.l) does not belong to him and it might duplicate the debt for \$147 (SOR 1.c).

Applicant has a child support order, which is paid through payroll deduction. He is about \$1,600 in arrears.²¹ Through March 15, 2006, he paid \$250 a week for child support and that amount was reduced to \$25 on March 22, 2006.²² A reduction in child support occurred because his son lived with him for a year and a half, and he continued to pay the full amount for child support.²³ When the amount was recalculated, his payment was reduced. His son is now 22 years old.

Applicant proffered seven letters of recommendation from his coworkers.²⁴ They all think that he is a reliable, trustworthy, and dependable worker.

Applicant's annual salary is approximately \$43,680.²⁵ He does not own a vehicle. He has about \$100 in a savings account.²⁶ Although he has a retirement account, he is not certain how much it is worth.²⁷ For the past seven months, Applicant has been working seven days a week.²⁸ He stated that working this hard enables him to financially assist his children and girlfriend.²⁹

POLICIES

¹⁷Tr. at 49-50.

¹⁸Tr. at 57-58.

¹⁹Tr. at 59.

²⁰Tr. at 60.

²¹Tr. at 97.

²²Tr. at 64.

²³Tr. at 62.

²⁴Ex. H (Character Letters).

²⁵Tr. at 97; Ex. J (Earning's Statement).

²⁶Tr. at 77.

²⁷*Id.*

²⁸Tr. at 29.

²⁹Tr. at 123.

“[N]o one has a ‘right’ to a security clearance.”³⁰ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”³¹ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³² An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.³³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.³⁵

The Revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

CONCLUSIONS

I have carefully considered all facts in evidence and the legal standards, and I reach the following conclusions.

Guideline ¶ 18 articulates the Government’s concern regarding financial problems. “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” (AG ¶ 18)

Applicant has a long history of financial problems going back to 2003, when two judgments were entered against him. In 2003, a judgment was entered against him for \$2,222. In 2006, he paid

³⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³¹*Id.* at 527.

³²Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

³³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³⁴*Id.*; Directive, ¶ E2.2.2.

³⁵Exec. Or. 10865 § 7.

the judgment. He indicated that he has no knowledge of what the judgment filed in 2003 for \$1,707 represents. Moreover, he has other debts totaling \$25,495 that are still delinquent and outstanding. Accordingly, Financial Considerations Disqualifying Conditions ¶ 19(a) (*inability or unwillingness to satisfy debts*) and ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Various factors can mitigate financial considerations security concerns. Applicant had heart surgery in 2000, and received short-term disability payments for the three months he was recovering and out of work. In March 2004, he had surgery on his left shoulder, due to a job-related injury. He received \$18,110.18 in worker's compensation benefits for the period March 12, 2004 through September 26, 2004. In November 2004, he had surgery on his right shoulder for an on-the-job injury. Subsequently, he received \$13,578.47 in worker's compensation benefits for the period November 19, 2004 through April 24, 2005. He was out of work for about one year, six months for each surgery. However, his surgeries in 2000 and 2004 can no longer be used as legitimate reasons for his unhealthy financial situation. I conclude that Applicant was financially compensated for his surgeries by short-term disability and worker's compensation payments, albeit, he did not earn his full salary but he did have an income and could have made arrangements with his creditors if his income was limited. Consequently, Financial Considerations Mitigating Conditions ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*) does not apply.

Applicant has not taken his financial responsibilities seriously. This is evidenced by the limited payments he made on the debt listed in the SOR. He paid a \$48 debt on August 29, 2007. Moreover, he indicated that a debt for \$147 would be paid the day after the hearing. Other debts remain unpaid and he plans to include them in his Chapter 13 bankruptcy. Although he is being counseled on his finances, the record reveals that he sought counseling about two months before the hearing. Whatever progress he has made has been slow and not results oriented by the hearing date. Consequently, ¶ 20(c) (*the person has received or is receiving counseling for the problem and/or is under control*) and ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply.

I now turn to the general factors of the whole person concept. I applaud Applicant for securing a job that provided a good career without completion of a high school education. Applicant has a sluggish approach to handling his finances. A 2003 judgment was paid in 2006. A debt for \$48 was not paid until August 2007. For the past seven months, he has been working seven days a week. Rather than make payments on his outstanding debts, he is giving his money to his children and girlfriend, which enhances their financial coffers rather than his. As a remedial fix, he has been pondering filing bankruptcy. However, he is slowly trying to deal with his finances, and it is questionable as to whether he will ever pay his delinquent debts. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required

by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

DECISION

In light of all of the circumstances in the case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams
Administrative Judge